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# Procurement of Equipment and Related Services

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## PURPOSE

The purpose of this policy is to provide guidance and establishes the federal, state, and local regulations and procedures for procurement of goods and services. Pacific Gateway staff and subrecipients of funds are responsible for complying with all applicable fiscal guidelines of respective funding streams.

## BACKGROUND

The Uniform Guidance under Title 2 CFR Part 200 provides fiscal and administrative guidance for the administration of the Workforce Innovation and Opportunity Act (WIOA) program, including specific requirements for purchasing goods or services as related to equipment. While the format and wording of the Uniform Guidance and DOL Exceptions vary slightly from the U.S. Office of Management and Budget's (OMB) previous circulars, the intent of the federal government is consistent. The intent is to ensure that purchases of goods or services are approved and performed through fair and open competition.

## POLICY AND PROCEDURES

All staff and subrecipients of WIOA and non-WIOA funding from Pacific Gateway must follow the guidelines stated in the policy. In rare cases, the City may waive some policy requirements for non-WIOA purchases.

Should there ever be a conflict between City and WIOA policy requirements, the most stringent guidelines apply. Regardless of the procurement method utilized, all transactions require a specific procurement action (per WSD17-08).

Only the City Council can bind the City to a contract in excess of \$200,000. The City Manager, or his designee, has the authority to bind the City to a contract below \$200,000. City Council approval is also required for purchases over \$100,000 that cannot be procured through an Invitation to Bid, Requests for Proposals, or if less than three quotes/proposals are received.

### A. Definitions

**Contract** - A legal instrument by which a subrecipient purchases property or services needed to carry out the project or program under a federal award. This term does not include a legal instrument, even if the non-federal entity considers it a contract, when the substance of the transaction meets the definition of a federal award or subaward (Uniform Guidance Section 200.22).

**Contractor** - An entity that receives a contract (Uniform Guidance Section 200.23).

**Conflict of Interest** - An employee, officer, agent, or any member of the organization that has interest in a financial gain or tangible benefit and who participates in the selection, award, or administration of a contract supported by a federal award (Uniform Guidance Section 200.318[c][1]).

**Cost Analysis** - An element-by-element review and evaluation of the estimated or actual cost to determine the probable cost to the contractor.

**Equipment** - Tangible personal property (including information technology systems) having a useful life of more than one year and a per unit acquisition cost of which equals or exceeds the lesser of the capitalization level established by the non-federal entity for financial statement purposes, or \$5,000. (Uniform Guidance Section 200.33).

**Firewall** - An established policy or procedure that acts as a barrier or protection against an undesirable influence, outcome, or authority. Examples of firewalls include but are not limited to organizational arrangements that provide clear separation of duties and responsibilities, reporting hierarchy of managers, and staff that provide clear separation between job duties and responsibilities, and conflict of interest/confidentiality/disclosure agreements.

**Information Technology Systems** - Information technology systems mean computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services, and related resources (Uniform Guidance Section 200.58).

**Invitation for Bid (IFB)** - A type of solicitation document, used in a formal competitive bidding process, which contains a detailed statement of what the agency is attempting to purchase. An IFB is used to obtain simple, common, or routine services that may require personal or mechanical skills. Qualifying bidders compete solely on the basis of cost (California State Contracting Manual).

**Labor Surplus Area Firm** - The Department of Labor maintains a listing of areas of the nation where the average unemployment rate is 20% higher than the national unemployment rate. A listing and other information on labor surplus areas can be found at [www.doleta.gov/programs/lsa.cfm](http://www.doleta.gov/programs/lsa.cfm).

**Micro-Purchase Threshold** - Fiscal threshold set by Federal Acquisition Regulation (currently \$10,000 per Federal Acquisition Regulation [FAR] 48 CFR Subpart 2.1). The threshold is periodically updated based on inflation.

**Pass-through Entity** - A non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program (Uniform Guidance Section 200.74)

**Price Analysis** - The process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. This process determines whether the price is fair and reasonable.

**Procurement** - All stages of the process of acquiring property or services, beginning with the process for determining a need for property, equipment or services and ending with contract completion and closeout.

**Questioned Costs** - Any cost or procurement that is questioned by an auditor, pass-through entity or awarding agency representative. Purchases can be questioned due to possible violations of statutes and regulations, inadequate documentation or possible unreasonable costs (Uniform Guidance Section 2900.3).

**Request for Proposal (RFP)** - A type of solicitation document used in a formal competitive bidding

process where an invitation is presented for suppliers to submit a proposal on a specific commodity or services. The RFP process brings structure to the procurement decision and is meant to allow the risks and benefits to be identified clearly up front. The RFP is used to obtain complex services in which professional expertise is needed and may vary and/or where different methods and approaches may be applied during performance. (California State Contracting Manual).

**Request for Quote (RFQ)** - A type of solicitation document used in a formal competitive bidding process, mainly when the specifications of a product or service are already known and when price is the main or only factor in selecting the successful bidder.

**Simplified Acquisition Threshold** - Fiscal threshold set by Federal Acquisition Regulation (currently \$250,000 per FAR Subpart 2.1). The threshold is periodically updated based on inflation.

**Subaward** - An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract (Uniform Guidance Section 200.92).

**Subrecipient** - A non-federal entity that receives a subaward from a pass-through entity to carry out part of the federal program, but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from the federal awarding agency (Uniform Guidance Section 200.93).

**Supplies** – All tangible personal property other than equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life (Uniform Guidance Section 200.94.)

## B. General Provisions

The following provides information regarding significant federal procurement requirements. However, Pacific Gateway staff and its subrecipients are responsible for complying with all applicable federal requirements. Pacific Gateway and its subrecipients must have written procedures that include, but are not limited to, the following:

- Procedures to administer contracts and ensure contractors perform in accordance with the terms, conditions, and specifications of contracts.
- A written code of conduct for employees engaged in procurement activities and clearly established firewalls to avoid any internal or external conflict of interest.
- Procedures that detail the requirement for a review of prospective procurements to avoid purchase of unnecessary or duplicate items.
- Procedures that promote the use of shared resources and other agreements for common goods and services, as well as the use of federal excess and surplus property wherever possible.
- Standards to ensure that awards are made only to responsible contractors. The awarding agency standards should address integrity, compliance with public policy, past performance, and contractor resources (technical and financial) for prospective contractors.
- Procedures should document each significant step in making an award. The documentation should include rationale for method of procurement, selection of agreement type, selection of rejection criteria, and the basis for the contract price, including the independent agency estimate price.
- Limited conditions under which sole source procurement may occur.
- Requirements for a price or cost analysis.
- A cost sharing process (whenever applicable).

- Procedures to detail the review of prospective procurements to avoid purchase of unnecessary or duplicate items, including analysis of lease versus purchase.
- Documentation of each of the significant steps followed in making an award to include selection criteria, agreement type, basis for contract price, and independent agency estimate of price.
- A process to ensure that awards are made only to responsible contractors with the ability to perform successfully.
- Protest procedures to handle disputes related to both award and administration of contracts.

### C. Additional WIOA Requirements

In addition to the requirements of Uniform Guidance Sections 200.318 through 200.326, the following requirements apply to procurements and agreements funded under the WIOA:

- All procurement contracts between local boards and units of government must be conducted on a cost-reimbursement basis. (DOL Final Rule Section 683.200[c][4]). CFR 667.200(a)(3) There is no provision for profit with governmental agencies.
- If a fixed amount award with a governmental or non-profit agency results in revenues in excess of actual costs incurred, the excess revenues are considered to be program income (C 683.200[c][7]). Any fixed awards should reference this requirement.
- The local workforce investment plan must contain the competitive process used to award grants and contracts under all programs funded under the WIOA and training services outside the Individual Training Account (ITA) (DOL Final Rule Section 679.560[b][15]).
- The procurement requirements addressed do not apply to the identification of Eligible Training Providers. The process for identification of eligible training providers for training services under the WIOA is described in DOL Final Rule Section 680, Subpart B. The State is responsible for the development and maintenance of a State-wide training provider list. While not a federal requirement, each grantee should have a formal agreement for services when a training provider is to deliver services. This may be in the form of a purchase order, contract, voucher, or other mechanism that provides for payment information and may be incorporated or referenced in the individual ITAs.

### D. Reasonable Costs

All WIOA procurements must be “necessary and reasonable” in the operation of the WIOA programs and conform to the following:

- Consistent with uniform guidance and established policies and procedures.
- Similar costs must be considered either direct or indirect costs.
- Costs must be determined with generally accepted accounting principles.
- Costs must be adequately documented.

Procurements may benefit other non-WIOA/organizational operations as long as the procurement is necessary to WIOA program and the cost can be distributed in proportion of use. If the procurement benefits multiple WIOA projects the cost should be allocated based on relative benefit. If the relative benefit cannot be determined, a reasonable and documented method may be used. Costs cannot be shifted to additional programs to overcome fund deficiencies or to avoid federal restrictions (Uniform Guidance Section 200.405).

### E. Prior Approval

Written prior approval from the EDD is required for equipment and related services under the following criteria:

- Procurements with a per-unit cost that exceeds \$5,000.

- Related procurements with cumulative costs that exceed \$5,000 within the same state fiscal year.
- Procurements resulting in improvements to land, buildings, or equipment which exceed \$5,000.

Approval will be based on the reasonableness and allowable criteria (as outlined above), availability of funds, and other considerations. Written approval will include the timeframe or scope of the agreement (Uniform Guidance Section 200.407). Public exigency or emergency resulting in an immediate procurement need waives the requirement for prior approval, however, approval should be sought afterwards to conform the appropriate use of WIOA funds.

On-going procurement costs such as subscriptions, maintenance, license, support costs or procurement which are otherwise paid annually will be considered approved after the initial approval if the cost remains constant or decreases.

Procurements under \$5,000 which have additional or unexpected charges within the same 12-month period which causes the total cumulative cost to exceed \$5,000 can be submitted for Retroactive Approval through the prior approval process. The Retroactive Approval should be requested before the cumulative exceed \$5,000. Cumulative charges are only applicable for procurements of a single or set of similar or connected goods or services (e.g. servers and related infrastructure or computers and computer memory for equipment).

#### F. Threshold Guidelines

For detailed instructions on specific procurement methods, as appropriate and defined by these threshold guidelines refer to the City of Long Beach Purchasing Division Guidelines (Attachment A).

Any and all purchases require staff to complete a Request for Authorization to Purchase (RATP) form (Attachment B). City-required forms for the procurement of goods and services can be found on the City's website and are generally completed by staff requesting the goods or services. Fiscal Unit will notify staff if any of these City-required forms are needed.

Micro Purchase - > \$2,500 - Requires a minimum of one documented quote. Requesting Staff must utilize the Informal Bid Quote Form (Attachment C).

Purchases in excess of \$2,500, staff and sub-recipients must follow the City of Long Beach guidelines as summarized below. For additional information refer to Attachment A.

- > 2,500 to \$25,000 – Requires a minimum of three documented quotes. The following documentation is acceptable:
  - Online processing
  - Phone quote
  - Email quote
  - Fax quote
  - Catalog pricing

Specific to the City's General Fund – a Request for Quote Form (Attachment D) may be completed if a hard copy of the quote cannot be obtained from the vendor.

- > \$25,000 – Requires the Purchasing Division to administer the procurement process for purchases in excess of \$25,000. Pacific Gateway's Administrative Officer or the Contracts and Procurement Manager is responsible for submitting the procurement process request to the Purchasing Division. For specific instructions refer to Attachment A.

## G. Procurement Methods

All procurement actions are to be conducted in a manner that provides for “full and open competition” (Uniform Guidance Section 200.319). No procurement transaction will contain any requirements that restrict competition, unfairly promotes a single contractor or product, places excess burden on a contractor, or presents an organizational conflict of interest. Within the context of open competition, there are five procurement methods which subrecipients may procure goods or services; micro purchase, small purchase sealed bids, competitive proposals, and noncompetitive proposals.

The type of purchase method is generally determined by the “per transaction” value of the procurement and the type of good or service being purchased. “Per transaction” is a single solicitation for a single item (e.g., copying machine), group of related items (e.g., office furniture), or a specified service (e.g., staff training). Purchases are not to be broken down into smaller components to avoid more stringent procurement requirements.

For commonly used services/goods (e.g. office supplies, locksmith services, etc.), Pacific Gateway will utilize vendors procured by the City’s Purchasing Division.

### *Small Purchases*

Small purchase means the acquisition of goods or services that cost up to \$25,000 in the aggregate. Small purchases under \$2,500 require a minimum of one documented quote. Purchases that exceed \$2,500 require a minimum of three documented quotes. Quotes should be obtained from qualified sources. A cost/price analysis must be performed prior to purchasing the goods or services. In certain situations, other factors such as availability, delivery time, current stock, and location can also be taken into consideration.

Prices/quotations can be obtained from catalogs, current price lists, prior receipts, or contact (in person, telephone, fax or e-mail) with vendors. Hard copy catalogs and price lists should be updated at least annually, however real-time internet research is preferred.

Equipment purchases of \$5,000 or more per unit require prior approval from the funding agency.

Proper documentation for a small purchase includes the following:

- The reason for selecting the small purchase method.
- The subrecipient’s estimate of the potential purchase price.
- A description of the goods or services being purchased, including the quantity and any additional criteria used to determine the procurement decision. A copy of the RFQ would suffice.
- All providers contacted/considered and the prices offered using current catalogs, price lists, prior sales receipts, or formal quotes depending on the amount of the purchase.
- Why the provider was selected, including how the provider met any additional criteria, and the price analysis.
- Copy of the purchase document (sales receipt, contract).

### *Sealed Bids*

This procurement method is used when purchasing goods or services are specific and can be precisely defined, normally large quantities. The procurement must have a complete, adequate and realistic specifications or purchase description.

The sealed bid process requires the issuance of an Invitation to Bid (ITB). The ITB must be publicly solicited or advertised to an adequate number of known suppliers, provide sufficient time to respond,

and clearly state specifications, bidding processes, and dates. The ITB defines the quantity, timeframes, product requirements, specifications, and pertinent attachments of the good or service being purchased. Contractors are notified of the purchase requirements and submit a sealed bid to a specified location by a specified date and time.

A diligent effort should be made to secure at least three competitive bids. The responsible bidder (the bidder that can meet the technical requirements of the procurements) that submits the lowest bid will be awarded the contract. If only one bid is obtained and that bidder is deemed to be responsible then the noncompetitive process may be used.

To initiate a sealed bid Pacific Gateway's Administrative Officer or the Contracts and Procurement Manager with contact the City's Financial Management Purchasing Division. The City's Purchasing Division will complete all sealed bids. For additional information on the City's ITB process, refer to ITB Procedures & Guidelines (Attachment E).

Proper documentation for a sealed bid purchase includes the following:

- The reason for selecting the sealed bid method.
- The subrecipient's estimate of the potential purchase price.
- A copy of the Invitation to Bid (ITB).
- Bids received.
- Determination of the responsibility of the bidder.
- Why the provider was selected (cost proof of being the lowest bidder).
- Copy of the award document.

### *Competitive Proposals*

This method is typically used when the nature of the goods to be acquired cannot be defined as precisely as required by the sealed bid method. Competitive proposals are specifically used when factors other than price are important in the selection decision, such as technical requirements, program design, contractor services, performance statistics, and innovation or the specifications are of a functional nature or unclear.

A Request for Proposal (RFP) or Request for Quotations (RFQ) indicates the scope of work, the method for scoring the proposals, the deadline for receipt of proposals and the dispute/Summary of Appeals process and information. A public notification of the RFP is normally given through the City's e-notify system, posting on the websites, and PlanetBids, and in some cases, an announcement in a local newspaper that covers the entire service area. The RFP is provided to anyone who requests a copy and to prior bidders. A bidders' conference is usually held to allow interested parties to have any questions answered. Bidders' conferences also allow attendees to receive the same information. Questions and Answers are distributed equitably to all at the same time. Bidders are required to submit their proposals to a specified location by a specified date and time.

Each RFP is reviewed and evaluated as to the merits of the proposal. The review includes a cost analysis and a documented methodology for technical evaluation of each proposal. A review committee makes a final recommendation as to which proposal(s) best meets the stated requirements. Careful documentation of the successful bidder selection is to be maintained for reference. A public notice of intent to award is issued, and followed by the award and execution of the contract. If only one proposal is obtained and that proposal is deemed to be responsible, then the noncompetitive or sole source process may be used.

If less than three bids are received during a competitive process, justification must be written explaining the limited participation. The justification should include firms and individuals contacted. The documents should be kept in the agency's contract file and submitted with procurement requests,

if applicable.

RFP/RFQs are conducted by Pacific Gateway and Financial Management Purchasing staff and require significant lead-time. Individuals involved in the evaluation process are required to read the Code of Conduct and Conflict policy and sign the City of Long Beach Conflict of Interest & Certification of Confidentiality (Attachment F.1) and Pacific Gateway's Code of Conduct/Conflict of Interest/Non-Disclosure Statement (Attachment F.2).

Proper documentation for a competitive proposal purchase includes the following:

- The reason for selecting the competitive proposal method.
- The subgrantee's estimate of the potential purchase price.
- A copy of the RFP.
- Bidders' conference questions and answers.
- Bids received.
- The scoring criteria and the evaluation/scoring sheets for each proposal, including determination of the responsibility of the bidder and the cost analysis.
- Why the provider was selected.
- The public notice of intent to award.
- Copy of the award document.

#### *Noncompetitive Proposals (Sole Source and Exception to Policy)*

Noncompetitive proposals may only be used under certain limited circumstances. The reason for selecting this method along with the justification for the provider selection must be carefully documented and maintained. Per Uniform Guidance Section 200.320(f), the purchase must be infeasible under one of the other methods discussed above, and one of the following conditions apply:

- The good or service is available from only one source.
- Public exigency or emergency creates an immediate procurement need (e.g., a flood or fire requires the immediate availability of services).
- The federal awarding agency or pass-through entity authorizes the specific noncompetitive procurement (upon a formal request for approval).
- Competition is determined inadequate. This usually occurs after a sealed bid or competitive process has been used and there are insufficient bidders (fewer than three).

For non-competitive purchases, staff must use the Exception to Policy Request (Attachment G).

A cost analysis is required for all noncompetitive procurements. The reason for selecting this method along with the justification for the provider selection must be carefully documented and maintained.

Proper documentation for a sole source purchase includes the following:

- The reason for selecting the sole source method, including why the procurement was infeasible under one of the other procurement methods and which of the additional sole source conditions the procurement met.
- The subrecipient's estimate of the potential purchase price.
- A copy of the ITB/RFP/RFQ.
- A determination of the responsibility of the bidder and the cost analysis.
- Why the provider was selected.
- Copy of the award document.

#### H. Required Contract Clauses



Contracts entered into by the subrecipients may be fixed or cost reimbursement, depending on the method of procurement and goods of services being procured. Each agreement funded by federal funds must contain the following contract clauses referred to in Uniform Guidance Appendix II to Part 200, as appropriate:

- All contracts in excess of the simplified acquisition threshold must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms. The clause must also provide for sanctions or penalties, as appropriate.
- All contract in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity, including the process for exercising the clause and any basis for settlement.
- Compliance with Equal Employment Opportunity provisions identified in 41 CFR Part 60.
- Compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 40 U.S.C 3141-3148) for prime construction contracts in excess of \$2,000.
- Compliance with Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) for contracts in excess of \$10,000 that involve the employment of mechanics or laborers.
- Compliance with Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants (37 CFR Part 401) for any small business or nonprofit organization.
- Compliance with the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387) for any contract in excess of \$150,000.
- A provision requiring that contracts must not be issued for any entity listed on the Excluded Parties List System in the System for Award Management (SAM).
- Compliance with the Byrd Anti-Lobbying Amendment (31.U.S.C. 1352) for contractors bidding over \$100,000.
- Compliance with Section 6002 of the Solid Waste Disposal Act and 40 CFR part 247 for items in excess of \$10,000.

It should also be included in all applicable agreements that, regardless of the procurement method, anyone who provides WIOA services must abide by the WIOA equal opportunity and nondiscrimination provisions of Section 188 and 29 CFR Part 38.

#### I. Primary Bidding Method: RFP/SFP

Pacific Gateway's primary method of competitive bidding for contracts is referred to as the Request for Proposals (RFP). Potential bidders are made aware of funding available for competitive bid through notification in the e-notify system and registered vendors in the City of Long Beach PlanetBids system. RFP's are made available to public, private non-profit, and private for-profit entities through the RFP process. As appropriate, bidders' conferences are held to clarify the requirements for bid submittal.

The City of Long Beach RFP process includes:

- Release of the RFP to bidders and making it available via PlanetBids and the newspapers.
- In order to allow for timely and consistent responses to questions from applicants/bidders, the City has also implemented an electronic question and answer process. Questions are submitted by email and answers are posted to the website.
- Bidders' conference is held, if necessary.
- Upon receipt of proposals, a team of subject matter experts completes evaluation using factors specific to the solicitation.
- Evaluations and comments are recorded on an evaluation sheet. In the event of a significance difference in the evaluation among the reviewers, a second independent reading is done.

- As appropriate, staff presents recommendations to the Youth Council and/or the Board for approval.

For additional information on the City's RFP process refer to RFP Request for Proposal Qualification Process (Attachment H.1) and Request to Post RFP / RFQ (Attachment H.2).

For additional information on City Manager approval process refer to instructions on City Manager Approval Form (Attachment I)

## **REFERENCES**

- WIOA (Public Law 113-128)
- Title 2 CFR Part 200: "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Uniform Guidance)
- Title 2 CFR Part 2900: "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (DOL Exceptions)
- Title 20 CFR WIOA, "DOL Final Rule"
- Workforce Services Directive WSD17-08, "Procurement of Equipment and Related Services" (March 14, 2018)
- Workforce Services Directive WSD16-10, "Property-Purchasing, Inventory, and Disposal" (November 10, 2016)
- Workforce Services Directive WSD16-05, "WIOA Close-out Requirements" (July 29, 2016)
- Workforce Services Directive WSD16-16, "Allowable Costs and Prior Written Approval" (February 21, 2017)
- City of Long Beach Purchasing Guidelines
- City of Long Beach Administrative Regulation AR23-5

## **INQUIRIES**

For questions or assistance related to this policy, please contact the Pacific Gateway Workforce Innovation Network staff at (562) 570-3748.

## **ATTACHMENT(S)**

- City of Long Beach Purchasing Division Guidelines (Attachment A)
- Request for Authorization to Purchase V2 (Attachment B)
- Informal Bid Quote Form (Attachment C)
- Request for Quote Form (Attachment D)
- ITB Procedures & Guidelines (Attachment E)
- City of Long Beach Conflict of Interest & Certification of Confidentiality (Attachment F.1)
- Pacific Gateway's Code of Conduct/Conflict of Interest/Non-Disclosure Statement (Attachment F.2)
- Exception to Policy Request (Attachment G)
- RFP Request for Proposal Qualification Process (Attachment H.1)
- Request to Post RFP / RFQ (Attachment H.2)
- City Manager Approval Form (Attachment I)

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